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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,200	10/13/2005	Seigo Watanabe	279492US0PCT	1255
22850	7590	01/09/2009	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			NGUYEN, CAM N	
			ART UNIT	PAPER NUMBER
			1793	
			NOTIFICATION DATE	DELIVERY MODE
			01/09/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/553,200	WATANABE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Cam N. Nguyen	1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09/29/08 (an amendment/response).  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 4 and 6 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 4 and 6 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1.) Certified copies of the priority documents have been received.  
 2.) Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3.) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/30/08</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

**Response to Amendment**

1. The amendment filed on 09/29/08 has been made of record and entered. Claims 1-3 & 5 have been canceled. Claim 6 has been added.

Claims 4 & 6 are currently pending in this application.

**Claim Rejections - 35 USC § 102(b)**

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Sasaki et al., “hereinafter referred to as Sasaki ‘765”, (US Pat. 4,978,765).

Sasaki ‘765 discloses a fluidized bed catalyst which has a catalytic composition satisfying the following empirical formula:  $Q_qR_rMo_{10}Bi_aFe_bSb_cNi_dO_e(SiO_2)_f$  wherein Q represents P and/or B; R represents at least one alkali metal element selected from the group consisting of Li, Na, K, Rb and Cs; q, r, a, b, c, d, and f each represent atomic ratio of the element in the formula for which they are subscripts provided that q is 0 to 3, r is 0.01 to 1.5, a is 0.1 to 3, b is 0.1 to 2.5, c is at least 2 and not large than 15, d is 4 to 8, e is the number of oxygen atoms corresponding to the oxides formed by combining the above components together, and f is 20 to 150 (see col. 17-col. 18, claim 1).

With respect to the limitation on “the catalyst comprises a bulk composition and surface composition...have a relationship such that B/A is not greater than 0.6”, it is inherent that the disclosed catalyst would have the same properties as being claimed because the catalyst has the same composition and atomic ratios.

There is no patentable distinction seen between the claimed catalyst and that disclosed by Sasaki ‘765. Thus, the claims are anticipated by the teaching of the reference.

**Claim Rejections - 35 USC § 102(b)/103**

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sasaki et al., hereinafter referred to as “Sasaki ‘765”, (US Pat. 4,978,765).

Sasaki ‘765 discloses a fluidized bed catalyst which has a catalytic composition as described above.

Process limitations in the claim have been noted. While the product of the reference is not made by the same process, the product disclosed is the same as being claimed. It has been held that the patentability of the product and its method of production are separately determined. Thus, even though the process limitations in the claims are not disregarded, they have no bearing on the patentability of the claims product per se. See *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Brown*, 173 USPQ 688, 688 (CCPA 1977); *In re Fessman*, 180 USPQ 324, 326 (CCPA 1977). See also MPEP 2113.

**Response to Applicants' Arguments**

4. Applicants' remarks filed on 09/29/08 have been fully considered, but not deemed persuasive in view of the new ground of rejection(s) and/or objection(s) above and the following reasons.

Applicants appear to be argued on the differences in the process steps of preparing the catalyst between the claimed invention and the reference applied. Since the instant claims are called for "a catalyst" and not a process of preparing a catalyst, applicants' arguments are not found persuasive. Examiner maintains the position that the claims are anticipated by the teaching of the Sasaki reference because both the claimed catalyst and the disclosed catalyst have the same chemical composition. Thus, it is only reasonable to conclude that it is inherent that the disclosed catalyst would possess the same characteristics, such as the claimed "B/A being not greater than 0.6", as recited in the instant claim 4. Unless, a comparative data is provided or a showing that the disclosed catalyst (or the claimed catalyst) is in fact different in catalytic structure and characteristics, otherwise the rejections are maintained.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**Conclusion**

6. Claims 4 & 6 are pending. Claims 4 & 6 are rejected. No claims are allowed.

**Contacts**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Primary Examiner CAM N. NGUYEN, whose telephone number is 571-272-1357. The examiner can normally be reached on M-F, 9:00 AM - 6:30 PM, at alternative work site.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cam N. Nguyen/

Primary Examiner

Art Unit: 1793

/C. N. N./

January 04, 2009